

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

- v. -

BENJAMIN VIALIZ,

Defendant.

----- X

08 Cr. 009 (AKH)

**GOVERNMENT'S PROPOSED  
EXAMINATION OF PROSPECTIVE JURORS**

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The Government respectfully requests that the Court include the following questions in its examination of prospective jurors pursuant to Rule 24(a) of the Federal Rules of Criminal Procedure. The Court is requested to pursue more detailed questioning if a particular juror's answer reveals that further inquiry is appropriate and, in such an instance, to conclude with an inquiry as to whether the particular fact or circumstance would influence the juror in favor of or against either the Government or the defendant.

The Charge

1. This is a criminal case. The defendant, BENJAMIN VIALIZ, has been charged in an indictment with violating the federal firearms law. The indictment is not evidence itself. It simply contains the charge that the Government is required to prove to the satisfaction of the jury beyond a reasonable doubt. I would like to summarize the charge in this case in order to determine whether there is anything about the nature of this case which may make it difficult

or inappropriate for any of you to serve on the jury.

2. The indictment contains one count which charges that on or about October 30, 2007, BENJAMIN VIALIZ, the defendant, possessed a firearm, specifically a Raven Arms semi-automatic handgun, after having been convicted of a felony crime punishable by imprisonment for a term of more than one year, in other words, after he had been convicted of a felony.

3. Do any of you believe you have personal knowledge of the charge contained in the Indictment as I have described it?

Nature of the Case

4. Does any juror have any views about, or personal experiences with, the type of conduct charged in the Indictment that would make it difficult for you to sit as a fair and impartial juror?

5. The defendant is accused of violating a statute that makes it a crime for a person previously convicted of a felony offense to possess a firearm. Do any of you believe that you could not be fair and impartial because of the statute, as I have described it?

6. Does any juror feel that he or she could not view fairly and impartially a case involving such charges? Has any juror formed an opinion that the actions charged in the Indictment, as I have described them to you, should not be a crime?

Knowledge of the Trial Participants

7. As I mentioned, the defendant in this case is BENJAMIN VIALIZ. [Please ask the defendant to stand.] Do any of you know, or have any of you had any dealings, directly or indirectly, with the defendant or any relative, friend, or associate of the defendant?

8. To your knowledge, do any of your relatives, friends, associates, or employers know the defendant?

9. BENJAMIN VIALIZ is represented by B. Alan Seidler, Esq. [Please ask Mr. Seidler to stand.] Do any of you know Mr. Seidler? Have any of you had dealings, either directly or indirectly, with him or anyone associated with his law practice?

10. The Government is represented here, as in all cases where it is a party before this Court, by the United States Attorney for the Southern District of New York, who is Michael J. Garcia. The conduct of the trial will be in the immediate charge of Assistant United States Attorneys Amanda Kramer and Neil Barofsky. They will be assisted by Noha Moussa of the United States Attorney's Office. [Please ask Ms. Kramer, Mr. Barofsky, and Ms. Moussa to stand.] In addition, they may be assisted by Detective Michael Miata of the New York Police Department. Do any of you know Ms. Kramer, Mr. Barofsky, Ms. Moussa, or Detective Miata? Have any of you had any dealings, either directly or indirectly, with any of these people?

Relevant Names

11. I will now read a list of names of people whose names may be mentioned during the trial, or who may be witnesses in this case.

[The Government will provide the Court with a list of potential witnesses before trial.]

Do any of you know any of these people? Have you had any dealings, either directly or indirectly, with any of these people?

Relevant Location

12. The conduct at issue in this case and the arrest of the defendant took place

in or around the intersection of Brook Avenue and East 142nd Street, in the Bronx, New York.

Are any of you familiar with that area of the Bronx?

Relationship with Government

13. Do any of you know, or have any association -- professional, business, or social, direct or indirect -- with any member of the staff of the United States Attorney's Office for the Southern District of New York or the New York City Police Department or the Bureau of Alcohol, Tobacco, Firearms, and Explosives? Is any member of your family employed by any law enforcement agency, whether federal, state, or local?

14. Has any juror, either through any experience he or she has had or anything he or she has seen or read, developed any bias, prejudice or other feelings for or against the New York City Police Department? For or against the United States Attorney's Office? For or against any other law enforcement agency?

15. Have you, or has any member of your family, either as an individual, or in the course of business, ever been a party to any legal action or dispute with the United States, or with any of the officers, departments, agencies, or employees of the United States? Have any of you had any legal, financial or other interest in any such legal action or dispute, or its outcome?

Ability to Render a Fair and Impartial Verdict

16. As you can tell, during the trial, you will hear evidence concerning the unlawful possession of a firearm and ammunition. Does the fact that the charge involves the unlawful possession of a firearm or ammunition affect your ability to render a fair verdict?

17. Do any of you believe that it should not be a crime for a person who has been convicted of a felony to possess a firearm?

18. Do any of you believe that the law governing this crime should not be enforced or have any strong feelings about the firearms laws?

19. Have you ever owned a firearm? If so, for what reason? Has anyone in your family ever owned a firearm? If so, for what reason?

20. Have any of you or has any member of your family ever lobbied, petitioned, or worked in any other manner for or against any laws or regulations relating to ammunition, firearms, or gun control? If so, when and what did you do?

21. Has any juror been involved in an offense involving a firearm or ammunition?

22. Has any juror's relative, close friend, or associate ever been involved in an offense involving a firearm or ammunition?

Law Enforcement Witnesses

23. The Government witnesses in this case will consist in part of police officers and other personnel from the New York City Police Department, and an agent from the United States Bureau of Alcohol, Tobacco, Firearms, and Explosives, also known as ATF. Would any of you be more likely to believe a witness merely because he or she is an officer of the New York City Police Department? Would any of you be less likely to believe a witness merely because he or she is an officer of the New York City Police Department? Would any of you be more likely to believe a witness merely because he or she is an ATF Agent? Would any of you be less likely to believe a witness merely because he or she is an ATF Agent?

24. Does anyone have any personal feelings or experiences concerning the New York City Police Department that would in any way affect their ability to be fair and impartial in this case?

25. Would any of you be unable to follow the judge's instructions that the Government is not required to use any particular technique in investigating or presenting evidence of a crime?

Function of the Court and Jury

26. Will each of you accept the proposition of law that sympathy or empathy must not enter into the deliberations of the jurors as to guilt or innocence of the defendant, and that only the evidence produced here in Court may be used by you to determine the guilt or innocence of either defendant?

27. It is not a particularly pleasant duty to find another individual guilty of committing a crime. Is there any juror who feels that even if the evidence established a defendant's guilt beyond a reasonable doubt, he or she might not be able to render a guilty verdict for reasons unrelated to the law and the evidence?

Other Biases

28. In these questions, I have tried to direct your attention to possible reasons why you might not be able to sit as a fair and impartial juror. Apart from any prior question, does any juror have the slightest doubt in his or her mind, for any reason whatsoever, that he or she will be able to serve conscientiously, fairly and impartially in this case, and to render a true and just verdict without fear, favor, sympathy, bias, or prejudice — and according to the law as it will be explained to you?

Juror's Background

29. The Government respectfully requests that the Court ask each juror to state the following information:

- a. the juror's age;
- b. the area in which the juror resides and any other area the juror has resided during the last ten years;
- c. where the juror was born;
- d. the juror's educational background, including the highest degree obtained;
- e. whether the juror has served in the military;
- f. the juror's occupation;
- g. the name and location of the juror's employer, and the period of employment with that employer;
- h. the same information concerning other employment within the last five years;
- i. the same information with respect to the juror's spouse and any working children;
- j. what newspapers and magazines the juror reads and how often;
- k. what television programs the juror regularly watches; and
- l. the juror's hobbies and leisure-time activities, and organizations.

Requested Instruction Following Impaneling of the Jury

30. If at any time during the course of this trial, any person attempts to talk to you or to communicate with you about this case, either in or out of the courthouse, you should immediately report such an attempt to me through my deputy clerk. In this regard, let me explain

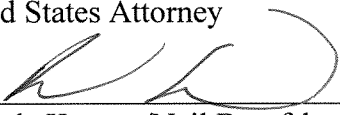
to you that the attorneys and the defendants in a case are not supposed to talk to jurors, not even to offer a friendly greeting. So if you happen to see any of them outside this courtroom, they will, and should, ignore you. Please do not take offense. They will be acting properly by doing so.

Dated: August 5, 2008

Respectfully submitted,

MICHAEL J. GARCIA  
United States Attorney

By:

  
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